

REMARKS

The Office Action rejected claims 1-3, 5-9, 11-16, 18-21, 45-47 and 52 under 35 USC 103(a) over Alessandro, in view of Stangroom, Vagani, McDaniel et al., Ricke and Kordic. Applicants respectfully traverse.

The invention combines a number of product aspects that in combination provide a quality frozen pizza that can be machine made but provides hand made quality. These aspects cooperate and result in a quality crust, accurate application of toppings and a hand thrown appearance. The products of the invention do not have an ordinary appearance in crust quality or shape as seen in conventional products. The product has the appearance of a freshly prepared hand made pizza.

These aspects are discussed on page 2 of the Office Action. The Examiner discusses the content of the prior art. The Office Action admits that the primary reference does not disclose any of the important aspects of the invention. The Office Action concedes that the Alessandro reference does not disclose the combination of: (1) oil content, (2) dimension of the edge, (3) a square or rectangular shape, (4) the irregular edge profile, (5) the degree of expansion, (6) the surface area of the dough, (7) the thickness of the dough, or (8) the weight of the dough as claimed.

The Office Action asserts that Vagani, Stangroom, and McDaniel disclose the amount of oil claimed in the Instant Application. The Office Action asserts that Kordic discloses the square or rectangular pizza shape and that Ricke et al. discloses the irregular edge. The Office Action recognizes the failure of the prior art to teach several of the claimed features, such as an irregular edge, acquiring a toast mark on the edge when baking, the edge dimensions, the dough surface area, the dough weight, the dough thickness, and the fourfold symmetry. The Office Action asserts on the bottom of page 2 through page 4 that these claimed features are simply a matter of routine experimentation or optimization from the prior art. The Office Action asserts the amount of oil, the amount of crust expansion, the nature of the edge pattern, the variation of the edge, the thickness of the crust, the surface area of the crust, the weight of the dough, and the other claimed aspects are all a matter of routine experimentation and optimization.

A modification of one or two of these aspects may be expected, however, the selection and engineering of all these numerous aspects in combination cannot be obvious. The selection of these aspects without hind sight is impossible. Each aspect requires its own testing and experimentation for selection and each aspect will have to be tested to guarantee that it does not interfere with another claimed aspect of the invention. The references do not teach or suggest that any of these parameters can be easily set independently or in combination. If each of these parameters needs to be optimized and set, then it is clear that undue experimentation is necessary to reach the claimed result. Further, there is no reason why a person of skill in the art would chose to combine the elements as claimed in the Instant Application. The only reason for combining these elements given is to obtain the claims of the Instant Application. Therefore, the combination of these elements as claimed in the Instant Application relies on impermissible hindsight.

Applicants rely on previous comments about the teaching value of this combination. Therefore, all of these parameters, as conceded by the Office Action to not be taught or suggested by the cited references, cannot be obtained by routine experimentation or by optimizing the cited references as claimed in the Instant Application without utilizing undue experimentation and impermissible hindsight; thus, these parameters can not be obvious.

Applicants discuss and highlight below two claimed elements that the Office Action has not found in the art. These features include (1) the two or fourfold symmetry of the irregular edge profile and (2) the registration means engaging edge.

Irregular Edge Symmetry

The symmetry of the irregular crust edge provides an important hand made feature not shown in the art. This feature provides an unexpected value. The symmetrical crust has an irregular edge on each pizza side. If the pizza is a square pizza, the irregular edge is repeated identically in a symmetrical fashion around the pizza perimeter with a four fold symmetry. If the pizza is rectangular, then the symmetrical edges are repeated on opposite edges with a two fold symmetry. This symmetry is particularly important since the irregular edge can be prepared using automatic production equipment, while providing the appearance of a hand prepared pizza

crust. Further, the irregular edge of the dough enhances the irregular shape upon cooking. For example, the Instant Application recites:

"FIG. 2 is an end view of a cross-section of both the par baked and final baked crust product. FIG. 2 shows that the parbaked crust having a defined edge and thickness upon being fully cooked becomes thicker, obtains a more significant bread like aspect with open cell structure, and becomes more irregular, more like the nature of a hand made, oven baked, freshly made pizza crust."

(Instant Application, para. 56).

With regard to the symmetry, on page 4, the Office Action asserts:

"It is a matter of preference that is within the skill of one in the art. It would have been obvious to form the pizza in square or rectangular shape because such shape is well known for pizza as exemplified in the Kordic disclosure. Changing or forming in any particular shape would have been an obvious matter or preference. When the crust has a square shape, it is obvious that the crust will have a fourfold symmetry."

In this portion of the response, the Office Action entirely misses the point of the invention. The claims recite that the edge has an irregular profile and it is this edge with its irregular profile that is symmetrical around the crust. For instance, the Instant Application recites:

"The square pizza, optionally, has a four-way symmetry such that the edge profile of any selected edge is identical to the edge profile of any adjacent edge. The pizza can be rotated through a 90° rotation and at each 90° position, the edge profile is substantially identical or overlapping. Such an edge aspect is both pleasing to consumers and provides ease and convenient manufacture. The pizza can be precut or uncut during manufacture."

(Instant Application, para. 24) (Emphasis added). Of course, a square is symmetrical, that is not the point. The point is that Applicants have imposed an irregular edge into the crust perimeter, each edge is identical and that irregular edge obtains a unique symmetry (see Fig 1A).

The single reference the Office Action asserts with respect to having an edge other than a regular edge is the Ricke Patent, which is a circular design patent showing a substantially regular scalloped edge. (Ricke, Fig. 1). A scallop repeated along a circular edge as taught in the Ricke Patent does not teach or suggest either (1) an irregular edge, or (2) a square or rectangular edge with two or four side symmetry as claimed in the Instant Application.

Furthermore, the issuance of a design patent on a crust shape for a pizza contradicts the Examiner's statement that "Changing or forming in any particular shape would have been an obvious matter of preference." If any pizza shape is obvious, a design patent on the scalloped edge in the Ricke patent could not have issued. Therefore, any designed pizza crust shape cannot be obvious as a matter of preference.

The cited references do not teach or suggest an irregular edge or that an irregular edge can be symmetrical as claimed in the Instant Application. Further, a specific pizza crust shape cannot be obvious as a matter of preference. Therefore, the claims are not obvious in view of the cited references.

Registration Means

The registration means engaging edge is a feature of the crust edge that cooperates with the conveyor mechanism and locates the crust on a conveyor belt accurately. The accuracy of the location obtains extremely accurate placement of sauce, cheese, meats and other pizza condiments to the crust. This registration means engaging edge is an important aspect of the invention since it substantially improves product quality and enhances production efficiency and economy.

With regards to the registration means engaging edge, the specification of the Instant Application recites:

"The irregular aspect and optional four fold symmetry, which is identical from crust to crust, provides a unique ability to place accurately the crust and register the crust in a specific location such that the sauce, cheese and other toppings can be carefully applied in exactly the right location. For the purpose of this disclosure, the term "registration" indicates that the crust is aligned carefully with

the application apparatus such that the sauce, cheese and other toppings are placed exactly in the correct location on the crust in a repeatably precise location from crust to crust during production. Such accurate registration is obtained by placing the crust having registration indicia in the crust edge on a conveyor surface in contact with a registration means on the conveyor that holds the crust in place using the irregular edges."

(Instant Application, para. 12).

The Office Action asserts that the registration means engaging edge located in the irregular edge of the crust is obvious. For instance, the Office Action recites:

"In the response filed 12/6/07, Applicant argues the crust symmetry and registration means are entirely functional and provide efficient filling and reduced waste in pizza production. This argument is not persuasive; it is not clear what applicant deems as the functional aspect of the square or rectangular shape. In any event, rectangular and square shapes are notoriously known for making pizza as exemplified in the Kordic reference. One would only need to look in a pizza store to see a square or rectangular shape pizza. Thus, whatever function is attributed to the shape, it is obvious the prior art pizza product will have such function."

(Office Action, p. 5).

Again the Office Action misses the point of the claims. The claims recite an irregular edge on a pizza and it is the symmetry of the irregular edge that is the substantial aspect of the invention. As shown earlier, the prior art does not teach or suggest symmetry of an irregular edge. The nature of the edge can be seen clearly. For example, Fig. 1A illustrates that the irregular edges 101, 102, 103 and 104 are identical and provide the required symmetry.

The Office Action goes on to say as follows:

"As to the registration means to help position the crust on the conveyor. This is a function during processing and not a function in the final baked product.

Furthermore, the registrations means is an indentation in the edge due to the shape of the edge and the prior art to Ricke et al teach such irregular shape."

(Office Action p. 5). The Office Action's comments are not clear with respect to this rejection. The Office Action appears to be arguing that the registration means engaging edge is a process limitation and not a structural limitation. However, the Office Action acknowledges that the registration means engaging edge is a physical portion of the crust by stating that the registration means engaging edge is an indentation in the shape of the crust's edge. If this is the Office Action's argument, this assertion is misguided. The registration means engaging edge is physically a portion of the crust both before and after baking, as conceded by the Office Action. For instance the Instant Application recites:

"The irregular shape of the square pizza always includes registration indicia, commonly, an indentation in the irregular periphery of the dough that can cooperate with registration means to maintain the position of the dough when topped using automated topping equipment. The topping means includes a conveyor having a registration peg against which the registration indicium from the dough rests to accurately place the crust in the topping apparatus."

(Instant Application, para. 35). Thus, the registration means engaging edge is a structural element and is not merely a process limitation.

Further, the registration means engaging edge as claimed in the Instant Application proves that the irregular edge shape of the crust is not merely an obvious ascetic element. The registration means engaging edge provides a unique and beneficial function to the crust of the claimed invention. For instance, the Application recites:

"The generally irregular shape can have registration indicia formed in the irregular crust. These indicia can comprise a recessed portion of the periphery that can match registration means, in this figure [(1A)] pins 105, fixing the pizza crust in a precise location such that the cheese, sauce and toppings are accurately placed on the pizza crust and the toppings are uniform across the surface and

reach as close to the edge as desired in this application commonly within 2 to 10 millimeters of the edge.”

(Instant Application, para. 55). The crusts disclosed in the Ricke and Kordic references do not teach or suggest any specific function, let alone a processing alignment function in relation to their shapes.

The Office Action implies that functionality of a claimed element has to be utilized at a certain time to be patentable by reciting: “As to the registration means to help position the crust on the conveyor. This is a function during processing and not a function in the final baked product.” This is not consistent. The timing of when a structural element is utilized is irrelevant to the structural limitation as an aspect in a claimed invention. Almost any structural element has an intended function and often times a structural element provides a function during processing. No law or rule excludes structural elements from patentability if they perform a function during processing. Therefore, the registration means engaging edge must be considered an enforceable element of the claims of the Instant Application.

Therefore, the square, rectangular, and scalloped shapes of the pizza crusts disclosed in the cited references do not teach or suggest the claimed registration means engaging edge of the Instant Application. There is simply nothing in the prior art with respect to such a registration means engaging edge. Further, the registration means engaging edge cannot merely be a processing step, since the registration means engaging edge is a physical object located in the irregular edge of the crust. Therefore, the registration means engaging edge of the Instant Application must be considered as a limiting element of the claims of the Instant Application. Thus, the claims can not be obvious in view of the cited references and withdrawal of the rejection is respectfully requested.

The Examiner rejected claims 10 and 17 under 35 U.S.C. §103(a) over Alessandro (EPA 0691078) in view of Stangroom (U.S. Patent No. 3,975,522), Vagani (U.S. Patent No. 5,441,751), McDaniel et al. (U.S. Patent No. 5,968,566) Kordic and Ricke as applied previously and further in view of Pesheck et al. Applicants have demonstrated the failure of the primary references that teach the invention. The Pesheck teachings about bread crumbs do not solve any of the failures of the prior art that teach the invention.

At an absolute minimum, the Office Action has failed to show in the prior art the teaching of the symmetrical irregular edge or the registration means engaging edge. Further, as to the argument regarding optimization or selection of the other elements of the invention, the Office Action has not explained why one of ordinary skill in the art would be able to perform all of the claimed elements together without undue experimentation and impermissible hindsight. When so many things become a matter of design choice, it is simply impossible to argue that the selection of each one is obvious in the context of at least four other different aspects of crust design.

In summary there is no *prima facie* case of obviousness. The references do not teach or suggest all the claimed elements. The Office Action has made no compelling argument why the art is to be modified into the claimed invention. Lastly, no reasonable chance of success is to be found in modifying so many crust parameters as suggested by the Office Action.

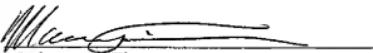
The symmetry and registration aspects of the claims achieve a level of product quality and efficiency not previously seen. In the past the conventional pizza had a regular round and some times square aspect. These predictable shapes in the prior art were recognized as the result of machine manufacture and were seen as indicia of inexpensive routine pizza products. The products of the invention do not have that ordinary appearance in the crust quality or shape. The product has the appearance of a freshly prepared hand made pizza.

In view of the above remarks, Applicants respectfully request a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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